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**IN THE
COURT OF APPEALS OF INDIANA**

BENJAMIN R. ORTIZ,

Appellant-Defendant,

VS.

No. 67A01-0703-CR-116

STATE OF INDIANA,

Appellee-Plaintiff.

APPEAL FROM THE PUTNAM CIRCUIT COURT

The Honorable Matthew L. Headley, Judge

Cause No. 67C01-0605-FC-48

August 23, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Benjamin Ortiz appeals his sentence of two and one-half years in the Department of Correction, which was imposed after Ortiz pleaded guilty to sexual battery as a D felony.¹ Ortiz raises one issue on appeal, which we revise and restate as whether Ortiz's sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

The relevant facts follow. On May 7, 2006, Ortiz was at eight-year-old A.C.'s house watching television. A.C.'s mother, her fiancé, and another couple were in the bedroom while Ortiz was alone with A.C. Ortiz kissed A.C. several times, both on the back and the lips, "in a way that adults shouldn't kiss children." Appellant's Appendix at 15. Ortiz also rubbed A.C. in her vaginal area. The next day, A.C. told her teacher, who in turn reported the incident to Child Protective Services (CPS).

The State charged Ortiz with sexual battery as a class D felony, child molesting as a class C felony,² and being an habitual offender.³ Ortiz pleaded guilty to sexual battery as a class D felony. The trial court sentenced Ortiz to two and one-half years in the Department of Correction.

The sole issue is whether Ortiz's sentence was inappropriate in light of the nature of the offense and the character of the offender. Ortiz asks that we reverse the trial court's sentence of two and one-half years and impose the advisory sentence of one and

¹ Ind. Code § 35-42-4-8(a)(2) (2004).

² Ind. Code § 35-42-4-3(b) (2004) (subsequently amended by Pub. L. No. 216-2007, § 42 (eff. July 1, 2007)).

³ Ind. Code § 35-50-2-8(a) (Supp. 2005).

one-half years. Ind. Appellate Rule 7(B) provides that “the court may revise a sentence . . . if, after due consideration of the trial court’s decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Our review of the nature of the offense is that Ortiz violated an eight-year-old child. Ortiz was a friend of A.C.’s mother. Ortiz stated he was around trying to “help [the] family out because they were poor.” Appellant’s Appendix at 166. Ortiz was a family friend and betrayed the trust of not only A.C., but her family as well.

Our review of the character of the offender reveals that Ortiz has an extensive criminal history from Colorado. He has been arrested for second degree burglary, second degree forgery, assault in the second degree, and attempt to commit child abuse upon his own daughter.

Ortiz was placed on probation in 1989. He violated probation twice and was eventually sentenced to the Department of Correction. Ortiz was also placed on parole after executing a sentence of two years in the Colorado Department of Correction. Ortiz left town while on parole and moved to Indiana, only to return to Colorado, where he was sentenced to eighteen months in the Department of Correction. Ortiz’s criminal history demonstrates his disregard for the law.

Finally, even though Ortiz pleaded guilty, he continues to blame others for his current situation. Ortiz claims that he was scared that “[he wouldn’t] get a fair trail [sic]” because he is not from Indiana and because the prosecutor was prejudiced by Ortiz’s

previous convictions. Id. Ortiz also stated that the police only arrested him based on his prior convictions and a photo of his ex-wife, who appeared to be no older than the age of fourteen. Ortiz also points out that A.C. supposedly had a crush on him and the “teacher blew it way out of controll [sic].” Id. at 170. Ortiz does not accept responsibility for his actions. Instead, he blames everyone else for his current arrest and conviction.

Ortiz argues that his sentence is inappropriate in light of his character because of his illnesses. These illnesses include multiple sclerosis, cerebral palsy, and degenerative disk disease. Despite his claims of serious illness, Ortiz admits that he “has had problems while incarcerated because he gave other people his medications and the jail will no longer give him all his medication.” Id. at 168.

After due consideration of Ortiz’s criminal history, medical illnesses, and position of trust, we cannot find that the two and one-half year sentence imposed was inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Stout v. State, 834 N.E.2d 707, 713 (Ind. Ct. App. 2005) (holding that sentence for sexual misconduct with minor was appropriate due to defendant’s position of trust and his previous criminal record), trans. denied.

For the foregoing reasons, we affirm Ortiz’s two and one-half-year sentence for sexual battery as a class D felony.

Affirmed.

MAY, J. and BAILEY, J. concur